IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6090 OF 2006

M/s.Shukla Housing Pvt. Ltd. ..Petitioner
V/s.
Kripa Shankar R. Shukla & anr. ..Respondents

Mr.B.A.Walimbe i/b. Miss.P.P.Tendulkar for the petitioner

CORAM : S.C.DHARMADHIKARI, J.

DATE : 15TH JUNE, 2007

P.C.

1. This Writ Petition challenges an order passed by the Additional District Judge, Kalyan condoning the delay in filing of the appeal which was preferred by the first respondent.

2. The delay according to the learned Judge has been properly explained in as much as the original appellant contended that the advocate advising him did not initially inform him that an appeal would lie against the order of the trial Court. Subsequently, he took advise of another advocate i.e.how the delay has occurred.

3. The contention before me is that the first

respondent has taken his chances and once the suit claim was not properly valued and the plaint was directed to be returned for his fault, he couldnot have challenged that order. The valuation of the claim for purposes of court fees and jurisdiction is malafide and i.e.how the original appellant does not deserve any sympathatic consideration at the hands of the Lower Appellate Court.

4. Arguments before me proceeded on merits of the matter and nothing precluded the petitioner from pointing out to the Lower Appellate Court that the application shouldnot be allowed for the reasons that are permissible in law. The merits can be pointed out when the appeal is taken up for hearing. For the present, the discretion exercised by the Court below cannot be said to be arbitrary or capricious warranting interference in this Court's limited jurisdiction under Article 227 of the Constitution of India. Petition is dismissed summarily.

(S.C.DHARMADHIKARI, J.)